

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

JIMMY SOSA,

Defendant.

USDS SDNY
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03 Cr. 502 (JGK)

MEMORANDUM OPINION
AND ORDER

JOHN G. KOELTL, District Judge:

By Memorandum Opinion and Order dated February 5, 2008, and Order dated February 8, 2008, this Court reduced the defendant's term of imprisonment from 62 months to 60 months in accordance with the reduced Sentencing Guidelines relating to crack cocaine. The 60 month sentence was the mandatory minimum for a violation of 21 U.S.C. §841(b)(1)(B) which formed the basis for one of the counts of conviction.

The defendant now moves for reconsideration of this Court's Order and asks the Court to impose a sentence below the mandatory minimum. The motion is without merit. At the time that the defendant pleaded guilty, the Court advised the defendant that an element of the offense was that it involved five grams and more of a mixture and substance containing a detectable amount of cocaine base in a form commonly known as crack. (March 9, 2004 Tr. at 294.) The Court advised that the mandatory minimum term of imprisonment for the offense was five years. (*Id.* at 295.) The defendant admitted that the amount of drugs involved in the

offense was at least five grams of a substance containing crack. (Id. at 309-14.) Therefore, the mandatory minimum sentence must be imposed for the crime with which the defendant was charged in the indictment and which he admitted to committing at his plea allocution.

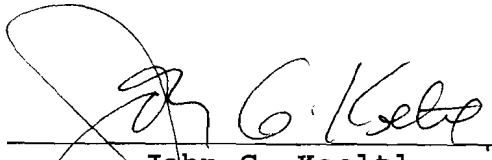
The defendant also argues that he is entitled to a lower sentence because of the application of the safety valve under 18 U.S.C. §3553(f). However, the Court already found at the time of sentence that the defendant was not entitled to the safety valve because the defendant had not provided all of the information he had concerning the offense of conviction, and indeed had engaged in obstruction of justice. Therefore, the defendant failed to satisfy §3553(f)(5). (See April 6, 2006 Tr. at 43-44.) There is no basis to reconsider the Court's prior decision.

Therefore, there is no basis to impose a sentence below the mandatory minimum of 60 months.

The defendant's motion for reconsideration is **denied**.

SO ORDERED.

Dated: New York, New York
March 4, 2008



John G. Koeltl
United States District Judge